



## FACTSHEET ABOUT OUTSTANDING FLORIDA WATERS (OFWs)

### **Authority**

Section 403.061(27), Florida Statutes, grants the Department of Environmental Protection (DEP) the power to establish rules that provide for a special category of waterbodies within the State referred to as “Outstanding Florida Waters” that are worthy of special protection because of their natural attributes.

### **Implementing Agency**

DEP is the agency that conducts the rulemaking to designate a waterbody as an OFW; however, each OFW must be approved by the Environmental Regulation Commission (ERC), a seven-member citizen’s body appointed by the Governor.

### **Regulatory Significance**

In general, discharges regulated through a permitting program of the DEP or a Water Management District (WMD) that are proposed within an OFW must not lower background ambient water quality. For purposes of an OFW designation, background water quality is the water quality a year prior to OFW designation or the year before a complete permit application, whichever water quality is better.

DEP and the WMDs cannot issue permits for direct discharges to OFWs that would lower ambient water quality. In most cases, this deters new wastewater discharges directly into an OFW, and requires increased treatment for stormwater discharging directly into an OFW. DEP and the WMDs also may not issue permits for indirect discharges that would significantly degrade a nearby waterbody designated as an OFW. The applicable permitting program rules should be consulted to determine the specific programmatic requirements related to discharges into an OFW.

In addition, activities or discharges within an OFW, or which significantly degrade an OFW, must meet a more stringent public interest test. Such activity or discharge must be “clearly in the public interest” compared to the less stringent “contrary to the public interest” test. For example, activities requiring an Environmental Resource Permit

(ERP), such as dredging or filling within a wetland or other surface water or construction/operation of a stormwater system, must be clearly in the public interest, if within an OFW, instead of not contrary to the public interest.

In determining whether an activity or discharge that requires an ERP permit is not contrary to the public interest or is clearly in the public interest, DEP or a WMD must consider and balance the following factors:

1. Whether the activity will adversely affect the public health, safety, welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of S. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

See § 373.414(1)(a), Fla. Stat.

### **Activities or Discharges Not Affected by an OFW Designation**

Some activities are not affected by an OFW designation simply because they do not require a permit from DEP or a WMD (exempt activities). These exempt activities include, but are not limited to:

1. Activities that are not regulated by DEP for water quality protection purposes, such as fishing regulations, setback ordinances, restrictions on boat motor types, and boat speeds.
2. Restoration of seawalls at previous locations.
3. Construction of non-commercial boat docks, on pilings, of less than 500 square feet.
4. Temporary lowering of water quality during construction activities (with special restrictions).
5. Activities to allow or enhance public use, or to maintain pre-existing activities (with certain safeguards required by Rule 62- 4.242(2)(b), F.A.C.).

Additionally, permitted activities or discharges existing on the date of designation and activities with a complete application on the date of designation are also not affected by OFW designation because they are “grandfathered.”

### **List of Designated OFWs**

A complete listing of Outstanding Florida Waters is provided in Rule 62-302.700(9), Florida Administrative Code. Outstanding Florida Waters *generally* include waters within the following areas:

- (a) National Parks and National Memorials
- (b) National Wildlife Refuges
- (c) State Parks, State Wildlife Parks, and State Recreation Areas
- (d) State Ornamental Gardens, State Botanical Sites, State Historic Sites and State Geological Sites
- (e) State Preserves, State Underwater Archeological Preserves, and State Reserves
- (f) Areas Acquired Through Donation, Trade, or Purchases Under the Environmentally Endangered Lands Bond Program, Conservation and Recreational Lands Program, Land Acquisition Trust Fund Program, Save Our Coast Program
- (g) National Seashores
- (h) State Aquatic Preserves
- (i) “Special Waters”
- (j) Scenic and Wild Rivers (both National and State)
- (k) National Preserves
- (l) National Marine Sanctuaries
- (m) Estuarine Research Reserves
- (n) National Forests (Certain Waters)

### **“Special Waters” OFWs**

While most OFWs are within the state or federal parks system, other waters may be designated as OFWs if they meet certain criteria. These “Special Water” OFWs are listed in paragraph 62-302.700(9)(i), F.A.C., and are designated as OFWs after the ERC makes a finding that the waters are of exceptional recreational or ecological significance

and a finding that the environmental, social, and economic benefits of the designation outweigh the environmental, social, and economic costs. The current list of “Special Waters” OFWs follows:

1. Apalachicola River
2. Aucilla River
3. Blackwater River
4. Butler Chain of Lakes
5. Chassahowitzka River System
6. Chipola River
7. Choctawhatchee River
8. Clermont Chain of Lakes
9. Crooked Lake in Polk County
10. Crystal River, including Kings Bay
11. Econlockhatchee River System
12. Estero Bay Tributaries
13. Florida Keys
14. Hillsborough River
15. Homosassa River System
16. Kingsley Lake & Black Creek
17. Lake Disston
18. Lake Powell, Phillips Inlet, and all tributaries to Lake Powell
19. Lemon Bay Estuarine System
20. Little Manatee River
21. Lochloosa Lake
22. Myakka River
23. Ochlocknee River
24. Oklawaha River
25. Orange Lake, River Styx, and Cross Creek
26. Perdido River
27. Rainbow River
28. Santa Fe River System
29. Sarasota Bay Estuarine System
30. St. Marks River
31. Shoal River
32. Silver River
33. Spruce Creek
34. Suwannee River
35. Tomoka River
36. Wacissa River
37. Wakulla River
38. Weekiwachee Riverine and Spring System
39. Wekiva River System
40. Wiggins Pass Estuarine Area and the Cocohatchee River System
41. Withlacoochee Riverine and Lake System

**Requirements For a “Special Water” OFW Designation:**

1. Rulemaking procedures pursuant to Chapter 120, F.S., must be followed;
2. At least one fact-finding workshop must be held in the affected area;
3. All local county or municipal governments and state legislators whose districts or jurisdictions include all or part of a water body proposed for Special Water designation must be notified at least 60 days prior to the workshop in writing by the Secretary of DEP;
4. A prominent public notice must be placed in a newspaper of general circulation in the area of the proposed Special Water at least 60 days prior to the workshop;
5. An economic impact analysis, consistent with Chapter 120, F.S., must be prepared that provides a general analysis of the effect of OFW designation on local growth and real estate development, including such factors as impacts on planned or potential residential, industrial, agricultural or other development or expansion; and
6. The ERC may designate a water of the State as a Special Water after making a finding that the waters are of exceptional recreational or ecological significance and a finding that the environmental, social, and economic benefits of the designation outweigh the environmental, social, and economic costs (Rule 62-302.700(5), F.A.C.).

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